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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 279 of 1987.

Date of decision : August 8 , 1989.

Sri Arun Kumar Mohanty, son of late Surendra
Nath Mohanty, Vill/P.O. Ambiliatha, Via-Jaleswar,
District-Balasore. ... Applicant.

Versus

1. Union of India, represented by the
Postmaster General, Orissa Circle,
Bhubaneswar-751 001.
2. Addl. Postmaster General, Orissa,
Bhubaneswar-751001.
3. Superintendent of Post Offices,
Balasore Division, Balasore-756001.

... Respondents.

For the applicant ... M/s. P.V. Ramdas,
B.K. Panda, Advocates.

For the respondents ... Mr. A.B. Mishra,
Senior Standing Counsel (Central)
Mr. Tahali Dalai,
Additional Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.
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- AL 5/9/89

J U D G M E N T

4 (11)

N.SENGUPTA, MEMBER (J) In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed to set aside the order of removal from service, copy of which is Annexure-3 to the petition, passed by Respondent No.3 and for consequential service benefits.

2. Some of the admitted facts may be stated at the outset. The applicant was appointed as Extra-Departmental Branch Postmaster, Ambiliatha in account with Jaleswar Head Office, appointment order was issued on 30.6.1978 by the Superintendent of Post Offices, Balasore Division. As the Branch Postmaster he was charged with duty of receiving money orders, deposits in Savings Bank account and under the Rules he was to maintain the accounts and remit cash balance at the end of the day's transaction to the Post Office with which it was in account. It is not denied that as such Extra-Departmental Branch Postmaster, he received Rs.102.50 paise from one Pitambar Raj on 1.11.1979 (the amount includes the money order commission) but shown in B.O. account on 7.11.1979, he received Rs.300/- from one Srimati Manorama Jena for deposit in S.B. Account of the said lady on 17.10.1979 this was also brought to account on 7.11.1979 and further that he had shown remittance of Rs.50/- on 13.10.1979 and reduced the cash balance at hand by Rs.50/- though the remittance was not made on that date. This irregularity in showing the remittance was detected on 15.10.1979 whereafter the applicant corrected the balance on 16.10.1979. Subsequently, the applicant was put off duty on 19.11.1979 and a departmental proceeding was started and charges

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were framed against the applicant. The copies of the charges are to be found in Annexure-1/1 to the petition which are reproduced here for better appreciation.

" Article -I

Shri Aruna Kumar Mohanty, ED BPM (under put off duty) Ambiliatha BO in account with Jaleswar HO while working as such accepted Rs.102.50 (Rupees one hundred two and paise fifty) only from Shri Pitambar Raj on 1.11.79 for issue of a money order and granted BO receipt No.48 with Amiliatha B.O.date stamp impression of 1.11.79. But he took the said amount to the Post Office account on 7.11.79 instead of 1.11.79 contravening Rule-174 of 'Rules for Branch Offices'.

Thus, said Sri Arun Kumar Mohanty failed to maintain absolute integrity and devotion to duty as required under Rule 17 of EDAs (Conduct & Service) Rules, 1964.

Article -II.

Said Sri Aruna Kumar Mohanty, ED BPM (under put off duty) Ambiliatha BO in account with Jaleswar H.O. while working as such accepted Rs.300/- (Rupees Three hundred) only from Srimati Manorama Jena W/o. Shri Narahati Jena for deposit in Ambiliatha BO (Jaleswar) SB A/C Np.222355 on 17.10.79 and granted receipt No.25 dt.17.10.79 in the book of SB-100 to the depositor to that effect. He (said Sri Mohanty) entered the said amount of Rs.300/- in the Pass Book of the depositor with his dated signature of 17.10.79 and B.O.date stamp impression dt.17.10.79 . But, instead of taking the amount of Rs.300/- to the BO account on 17.10.79 he took the same into the Account of the B.O. on 7.11.79.

Thereby, said Sri Aruna Kumar Mohanty contravened absolute integrity and devotion to duty as required under Rule -17 of EDAs (Conduct & Service) Rules, 1964.

Article -III.

Said Sri Aruna Kumar Mohanty ED BPM (under put off duty) Ambiliatha BO in account with Jaleswar HO while working as such showed a remittance of Rs.50/- (Rupees fifty) only to the account office in his BO daily account dated 13.10.79 reducing BO Balance by Rs.50/-. But actually he (sri Mohanty) sent no remittance to the account office though the full particulars of remittance and the weight of the cash bag were noted in the BO Daily Account on the

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said day. He continued to show the reduced BO balance in the B.O. Daily Accounts till 15.10.79 and raised the BO balance on 16.10.79 when pointed out by the account office.

Thereby, said Sri Mohanty kept short of B.O. balance for Rs.50/- (Rupees fifty) only for the period from 13.10.79 to 15.10.79 on contravention to the Proviso of Rule 171 of 'Rules for Branch Offices'.

Thus, said Sri Mohanty failed to maintain absolute integrity and devotion to duty as required under Rule -17 of EDAs (Conduct & Service) Rules, 1964. "

Thereafter, an enquiring officer was appointed and he gave his report, finding the applicant guilty of all the three charges, to the Disciplinary authority on 2.3.1987. The Disciplinary authority i.e. the Superintendent of Post Offices, Balasore Division agreed with the report and inflicted the punishment as noted above. The applicant preferred an appeal to the Post Master General, Orissa Circle, which was disposed of by Additional Post Master General, Orissa and the applicant did not succeed. Thereafter, the applicant has approached this Tribunal for the reliefs mentioned above.

3. The counter filed by the respondents, in substance, is that the applicant really misconducted himself by committing serious dereliction of duties and non-observance of the relevant Rules. It is unnecessary to set out all the allegations in the counter in detail.

4. We have heard Mr. P.V. Ramdas, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the Respondents. Mr. Ramdas, learned counsel appearing for the applicant, has advanced

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the following contentions; that the applicant could not be proceeded against for non-observance of the Rules as the Department did not impart him the training that it was obliged to do, that mere non-observance of the Rules does not amount to misconduct and finally, that the departmental authorities were not alive to the fact that the applicant was rather adolescent hardly above 19 years of age and was apt to commit mistakes. Mr. Ramdas also cited two decisions with regard to the meaning of mis-conduct which would be referred to in their proper places.

5. As regards the first contention of Mr. Ramdas it may be stated that nowhere in the counter the respondents have stated that infact any training was given to the applicant, all that has been stated in paragraph 5 to the counter is that a book of Rules for Branch Offices had been supplied to all the Branch Offices including Ambiliatha Branch Office and further that the applicant had really observed the Rules prior to the three irregularities mentioned in the charges. It is true that a person who assumes charge of an Office should be careful enough to observe the Rules or procedures ~~and~~ relating to the discharge of duties of that Office but ~~that~~ it would be found from the letter of Director General, Posts & Telegraphs No. 14-8/72-ED Cell, dated 18.8.1973 and letter No. 38-18/67-F/PAP dated 25.6.1968, that some training was recommended and this was definitely for making the Extra-Departmental Branch Post Masters, who

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are ordinarily not more qualified persons, conversant with the rules and procedures. Therefore, the Department was obliged to impart some training to such Extra-Departmental Branch Postmaster, as the applicant was, to get acquainted with the Rules or procedures. This need not detain us further.

6. The second and the third contentions may be disposed of together. If non-observance of Rules would amount to misconduct and as this Tribunal is not a superior appellate authority over the departmental appellate forum, this Tribunal cannot possibly grant the reliefs prayed for by the applicant. Therefore, it is of paramount importance to see if mere non-observance of Rules could be said to be misconduct. As would be manifest from the statement of facts made above, nowhere was it the case of the respondents that the applicant really appropriated the amount to his own use and the charges, which have been quoted above, would go to show that they related only to contravention of some of the Rules of the Branch Office. It was also not the case of the respondents at the time of departmental enquiry that the mistakes or irregularities were committed with an ulterior motive. Such being the facts, Mr. Ramdas has sought reliance on a decision reported in AIR 1979 SC 1022 (Union of India and others v. J. Ahmed). Of course, in that case interpretation of Rule 16(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 came up for consideration before Their Lordships of the Supreme Court. But what was really to be considered by Their Lordships was the meaning of the word 'misconduct'. In the course of the judgment of His Lordship Deasi, J., who spoke for the Court, it was observed

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that lance of efficiency cannot amount to misconduct. In paragraph 9 of the reported judgment the expression 'devotion to duty' was interpreted and there it was said that the expression was used as something opposed to indifference to duty or easy-going or light hearted approach to duty. In paragraph 11 His Lordship quoted with approval from Stroud's Judicial Dictionary, the meaning of the word 'misconduct' and it was stated that misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct. The underlining has been made to bring into hold relief as to what misconduct really means. At the cost of repetition, it may be stated that nowhere in the charges, allegation of any illmotive was made.

7. The next case relied on by Mr. Ramdas is the one reported in AIR 1984 SC 1361 (A.L. Kalra v. The Project and Equipment Corporation of India Ltd.). In this case also, judgment of the Court was delivered by Hon'ble Desai, J. It is unnecessary to refer to the facts of the reported case, suffice it to say that where an act has not been enumerated under the Rules as misconduct and remedy is provided for such act, removal from service for such act would be arbitrary. It is unnecessary to further discuss the applicability of this Ruling, what may be stated is that in the instant case, there is no allegation of any remedy to have been provided under the Rules applicable to the ED-BPMs. Therefore, the reported case is not of much assistance.

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8. To sum up, as there was no allegation of ill-motive on the part of the applicant and as the applicant never disputed the factual aspects to the charges and his explanation was that due to inexperience and inadvertance he could not send the cash bag though an amount of Rs.50/- was kept separate in a bag, it is difficult to find that the applicant had really misconducted himself. Therefore, the case cannot amount to failure to maintain integrity and devotion to duty and as such the departmental proceeding ~~is~~ ^{was} misconceived and consequently, the order of removal passed by the respondent No.3 ~~is~~ hereby quashed.

Since ~~we~~ have held that there was really no misconduct and accordingly quashed the order of removal from service, the authorities are directed to give service benefits to the applicant as are admissible during the intervening period i.e. from the date removal from service till reinstatement. The applicant be reinstated in service within one month from the date of receipt of a copy of this judgment.

9. Thus, this application stands allowed. We do not propose to award any costs to the applicant in view of the peculiar facts and circumstances of the case.

[Signature]
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Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

9 agree.

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
August 8, 1989/Saranghi.



[Signature]
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